

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON PURCHASE ELECTRIC	)	
COOPERATIVE CORPORATION, INC.	)	
	)	
_____	)	CASE NO. 92-054
	)	
ALLEGED FAILURE TO COMPLY WITH	)	
COMMISSION REGULATION 807 KAR 5:041	)	

O R D E R

After receiving an Electrical Utility Accident Investigation Report in which Commission Staff alleged that Jackson Purchase Electric Cooperative Corporation ("Jackson Purchase ECC") had failed to comply with Commission regulations, the Commission ordered the utility to show cause why it should not be penalized for its alleged failure. Jackson Purchase ECC responded to the allegations contained in the report, stipulated the facts, and presented oral argument to the Commission.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Jackson Purchase ECC is a corporation formed under the provisions of KRS Chapter 279, is engaged in the distribution of electricity to the public for compensation for light, heat, power and other uses, and is therefore a utility subject to Commission jurisdiction.

2. Commission Regulation 807 KAR 5:041, Section 3, requires an electric utility to maintain its plant and facilities in

accordance with the standards of the National Electrical Safety Code (1990 Edition) ("NESC").

3. Commission Regulation 807 KAR 5:006, Section 22,<sup>1</sup> as of November 1, 1991, required a utility to adopt and execute a safety program.

4. NESC Section 42 (420D) requires employees to perform preliminary inspections or test to determine existing conditions before working on energized lines.

5. NESC Section 42 (420H) requires that employees use the personal protective equipment and devices provided for work.

6. NESC Section 42 (421A) directs a foreman or person in charge to see that safety rules and operating procedures are observed.

7. Prior to November 1, 1991, Jackson Purchase ECC had established safety rules which require all employees to use rubber gloves when working near energized lines and to test and ground energized lines before considering them de-energized.

8. Prior to November 1, 1991, Jackson Purchase ECC had instituted and adopted a safety program in compliance with 807 KAR 5:006, Section 22.

9. Jackson Purchase ECC employees William Scott and Howard Puckett participated in this safety program.

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<sup>1</sup> On February 24, 1992, the Commission amended Commission Regulation 807 KAR 5:006. With this amendment, Commission Regulation 807 KAR 5:006, Section 22, became 807 KAR 5:006, Section 24.

10. Jackson Purchase ECC has employed Scott since May 24, 1965. Prior to March 1992, Scott was employed as a journeyman lineman or sub-foreman for 12 years.

11. Jackson Purchase ECC has employed Puckett since June 6, 1971. From October 2, 1971 until March 2, 1992, Puckett was employed as a journeyman lineman or sub-foreman.

12. Jackson Purchase ECC has no record of any safety rule violations by Scott or Puckett prior to November 1, 1991.

13. On November 1, 1991, Scott was seriously injured while repairing a downed 7,200 volt 3-phase line. He suffered severe burns to his arm and chest when he came into contact with the energized conductors. His injuries required extensive hospitalization and caused him to miss 86 workdays.

14. At the time of the incident, Jackson Purchase owned the facilities in question.

15. At the time of the incident, Scott was not wearing the rubber gloves provided to him nor had he tested or grounded the conductors in question. Scott had in his possession the rubber gloves provided to him. At the time of the incident, Jackson Purchase ECC had provided or made accessible to Scott all safety equipment required by NESC, including grounders.

16. Scott's failure to wear rubber gloves while working on an energized line in question constituted a violation of NESC Section 42 (420H) and Jackson Purchase ECC safety rules.

17. At the time of the incident, Scott knew or should have known of the line's condition and the requirements of the NESC and Jackson Purchase EEC's safety rules.

18. Scott's failure to positively ensure that the conductor in question was de-energized before making repairs constituted a violation of NESC Section 42 (420D) and Jackson Purchase ECC's safety rules.

19. At the time of the incident, Puckett was the person in charge at the work site and was supervising Scott. Puckett was standing on the ground below Scott approximately 34 feet and was observing and assisting him as he performed the repair work. The weather conditions did not affect Puckett's ability to observe Scott's efforts.

20. Puckett's failure to see that Scott observed all safety rules and operating procedures at the site and to adopt such precautions as were within his authority to prevent the incident in question constitutes a violation of NESC Section 42 (421A).

21. At the time of the incident, Puckett knew or should have known of the line's condition, Scott's activities, and the requirements of Jackson Purchase's safety rules and the NESC.

22. As a result of the incident, Jackson Purchase ECC reprimanded Scott and Puckett.

23. Any utility which willfully violates any Commission regulation is subject to civil penalty. KRS 278.990(1). A willful violation "means 'knowing' violation or 'knowing failure to comply.'" Oldham v. Kubinski, 185 N.E.2d 270, 280 (Ill. App.

1962). See, Muncy v. Commonwealth, Ky., 97 S.W.2d 606, 609 (1936) ("The word 'wilful' in its general acceptation means intentionally, not accidentally nor involuntarily.") See also Woods v. Corsey, 200 P.2d 208, 211 (Cal. App. 1948) (A willful violation is "one which is intentional, knowing, voluntary, deliberate or obstinate . . . .")

24. KRS 278.990(1) provides: "Each act, omission, or failure by an officer, agency, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility."

25. Scott's violation of NESC Section 42 (420D and 420H) was willful.

26. Puckett's violation of NESC Section 42 (421A) was willful. His failure to enforce and execute Jackson Purchase ECC's safety program was also willful.

27. At the time of the incident, Puckett and Scott were acting within the scope of their employment as Jackson Purchase ECC employees.

28. Based upon the principle of imputed liability contained in KRS 278.990(1), Jackson Purchase ECC willfully violated Commission Regulation 807 KAR 5:041, Section 3, by failing to comply with NESC standards while maintaining its plant and equipment and Commission Regulation 807 KAR 5:006, Section 24, by failing to execute its safety program.

29. For its willful failure to comply with Commission Regulations 807 KAR 5:041, Section 3, and 807 KAR 5:006, Section 22, Jackson Purchase ECC should be assessed a penalty of \$500.

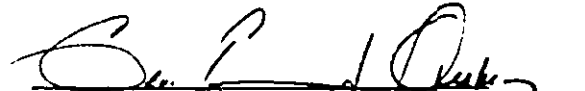
IT IS THEREFORE ORDERED that:

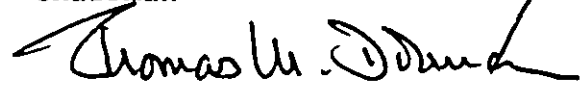
1. A penalty in the amount of \$500 is assessed against Jackson Purchase ECC for its willful failure to comply with Commission Regulations 807 KAR 5:041, Section 3, and 807 KAR 5:006, Section 22.

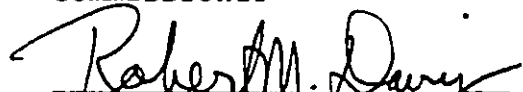
2. Jackson Purchase ECC shall pay the assessed penalty within 20 days of the date of this Order by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky." Said check or money order shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 4th day of December, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Commissioner

  
Vice Chairman

ATTEST:

  
Executive Director